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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07.12.2022

Decided on: 10.05.2023

+ **CRL.A. 620/2019**

YOGESH SHARMA @ YOGI

..... Appellant

Represented by: Mr. Siddharth Yadav, Adv.

versus

STATE

..... Respondent

Represented by: Mr. Laksh Khanna, APP for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J :-

1.0 Vide this appeal, the appellant is assailing the judgment dated 15.01.2019 (**'impugned judgment'** in short) passed by Ld. ASJ (Central), Tis Hazari Courts, Delhi, whereby the appellant was convicted for the offences under Sections 302/201/34 of The Indian Penal Code, 1860 (**'IPC'** in short), in Sessions Case No. 27186/16, in FIR no. 96/2012, Police Station Sarai Rohilla; and order on sentence dated 16.01.2019, whereby the appellant was sentenced to life imprisonment under Section 302 IPC with fine of Rs.50,000/-, in default to undergo rigorous imprisonment for six months; and further to undergo rigorous imprisonment for three years for the offence under Section 201 IPC read with Section 34 IPC with fine of

Rs.10,000/-, in default of payment of fine to undergo rigorous imprisonment for three months; and both the sentences shall run concurrently.

2.0 Briefly stating, case of the prosecution is, that on 17.3.2012, HC Rajbir (PW-15) informed the Duty Officer HC Rajender (PW-5) of Police Station Sarai Rohilla on phone, that one white plastic bag covered with blanket having blood stains was found lying on the side of Ganda Nala Road near 56 Bigha park which could be containing a dead body and requested that some officers may be sent. Said information was reduced into writing vide DD No.15A (Ex.PW5/A) by PW-5 and was handed over to Inspector Bishwajit (PW-26) (IO), who along with SI Sunil Kumar, HC Raj Bahadur, No. 167/N (PW-20) and Ct. Parmod Kumar, no.2323/N (PW-19) reached the spot. On reaching, the investigating team noticed a plastic *katta* lying covered under a blood stained blanket of mehroon colour; on removing the blanket, it was found that the plastic *katta* contained blood stained clothes and some parts of dead body of a female. Crime team was requisitioned. On arrival, crime team on inspection found 8 parts of the dead body of a female aged about 25 years in the plastic bag, but head was missing. It also observed a tattoo of “PJ” on the right arm of the dead body and one tattoo of “Om” on the right hand and one tattoo of “SR” near the base of the right thumb. Upper portion of the body was having green colour suit with pink colour flowers. The lower part of the body was nude. There were two cut marks on the dead body, one vertical cut mark from naval to the breast and the second cut mark alongside the abdominal region, which appeared to have been made by some sharp edged weapon. Plastic *katta* also contained ladies’ and gents’ blood stained clothes, one broken head of Aristocrat Premium bottle with blood

stained glass pieces, torn pieces of coloured photographs having blood stains. One broken piece of ear phone was also found tagged with the plastic katta. Photographs of the place were taken by the crime team.

2.1 IO prepared *rukka* (Ex.PW26/A) on the copy of DD entry no.15A (Ex.PW5/A) and sent the same to Police Station through PW-20/HC Raj Bahadur for registration of the FIR. After getting FIR No.96/2012 (Ex.PW5/B) registered, PW-20 returned to the spot and handed over a copy of FIR and original *rukka* to the IO. Copies of the special report were delivered to the Metropolitan Magistrate, DCP-I and DCP-II and ACP, Police Station Sarai Rohilla through Special Messenger, Ct. Krishan Kumar (PW-18). The dead body was sent to mortuary. All the aforesaid articles i.e. blanket, blood stained clothes, one *katta* in another *katta*, blood stained photographs, broken bottle, one broken piece of ear phone were sealed and seized by the IO and were collected and then got deposited in the Malkhana. On 20.03.2012, post-mortem was got conducted on the dead body at Subzi Mandi Mortuary. After post-mortem, dead body was received and was then got cremated at Sarai Kale Khan cremation ground and the case property was deposited in Malkhana.

2.2 It is further the case of prosecution that on 22.03.2012, IO along with staff approached Shanti Nagar police chowki, PS Keshav Puram and met HC Ompal (PW-11) to enquire whether any missing report of any lady had been lodged at the Police Post by showing photographs of parts of the dead body. On which, PW-11/HC Om Pal informed the IO that on 18.03.2012, the appellant/accused Yogesh Sharma had visited PP Shanti Nagar to lodge a

missing report of his wife Pooja, stating that she was missing since 16.03.2012. But the missing report could not be recorded as the appellant/accused was not having any photograph of his wife. PW-11/HC Ompal also informed that one HC Balraj (PW-15), who knew the appellant/accused requested him (HC Ompal) to help the appellant/accused. Thus, HC Balraj (PW-14) was contacted who on enquiry confirmed the said fact and also informed that he knew the appellant/accused since the days he remained posted at police post Shanti Nagar.

2.3 Thereafter, on 22.03.2012 IO/PW-26 along with HC Balraj (PW-14) went to the factory of the appellant/accused at Premises No.1387, Gali No.92, Ganesh Nagar, Tri Nagar. Three persons including the appellant/accused were found present at the said factory. They were apprehended, interrogated and their disclosure statements were recorded. Pursuant thereto, all of them led the police officers to a portion in the ground floor of the said factory and got recovered an iron Kund (Ex. 13), which was sealed and seized vide seizure memo Ex. PW 20/O. Thereafter, the appellant/accused got recovered scooter bearing registration no. DL4S AN 1288, which was parked in the street near the said factory. Police team was also led to House no. 2492/193, Omkar Nagar, where the appellant/accused and Ms. Pooja/the deceased used to reside on first floor, where owner of the house Ravi Kumar (PW-3) was met. The appellant/accused picked up a chopper wrapped in a newspaper, from the slab in the tenanted room of the first floor and produced it before IO/Inspector Bishwajit (PW-26), which was sealed and seized. Further, three glasses including one partly broken, one comb with one hair in it and 2/3 hair-bands, one empty plastic bottle, one

wiper and one piece of broken ear phone found in the tenanted room, were also sealed and seized by the IO. IO/Inspector Bishwajit (PW-26) requisitioned crime team to house no.2492/193, which inspected first floor portion. In charge of Crime team prepared and submitted the report to IO. IO then recorded statements of members of the crime team.

2.4 It is also the prosecution case that the appellant/accused along with two co-accused persons led the police party headed by IO/Inspector Bishwajit (PW-26) to Ganda nala (drain), Chhapan Bigha Park, Bharat Nagar and pointed out the place where he and the co-accused Vinay had thrown the dead body of Ms.Pooja; and also the place where the appellant had burnt blood stained clothes. Thereafter, they took the police party to the aforesaid factory and pointed out the place where they had burnt the head of the deceased. Pursuant to his disclosure statement, the appellant/accused also led the police party to the bushes near the nahar opposite/near metro pillar no. 255 and pointed out and got recovered from the bushes, pants, shirt and baniyan which he was wearing at the time of the incident. Same were sealed and seized. As per prosecution, mother of the deceased Smt. Usha identified the deceased after seeing the photographs of the hand of the deceased. She also identified the deceased's kurta when shown to her.

2.5 During investigation, the appellant/accused was taken to PP Shanti Nagar where HC Ompal (PW-11) identified him as the person who had met him for the purpose of missing report.

2.6 It is further the case of prosecution that on 24.03.2012, pursuant to the disclosure, IO Inspector Bishwajit (PW-26) took all the accused persons in the area of Nala to search for the head of deceased but the same could not be traced. Further, the appellant/accused Yogesh also led the police to the place from where he had procured chopper (i.e. jhuggi no.6, Ahata Thakur Das, Main Rohtak Road, Sarai Rohilla), with which the body of the deceased was chopped. During further interrogation, the appellant/accused disclosed that the head of the deceased was thrown in some unknown jungle in the area of Rishikesh, Uttranchal and then offered to get the same recovered. However despite efforts, head of the deceased could not be recovered.

2.7 During investigation, the appellant/accused also took the police party to Nursing Home known as 'Nirmal Hospital' where Pooja/the deceased had undergone abortion. Concerned record was collected from there.

2.8 As per charge sheet, opinion from the CMO, Subzi Mandi Mortuary was sought regarding weapon of offence i.e. chopper. Blood sample of Smt. Usha, mother of the deceased was got collected at HR Hospital and the same and other exhibits were sent to FSL Rohini for DNA examination. Scooter recovered at instance of the appellant/accused was got inspected from the FSL team. Blood stains were lifted by FSL team from the dicky of the said scooter which were sealed, seized and deposited in Malkhana and was later sent to FSL. Reports from FSL were collected. On completion of investigation, charge-sheet under Sections 302/201/34 IPC against the appellant/accused and other accused persons i.e., Vinay and Ajay was filed before the Court. Charge under Section 302 and Section 201 read with

Section 34 IPC was framed against the appellant/accused Yogesh and other accused persons were charged for offence under Section 201 read with Section 34 IPC. After trial, accused Ajay was acquitted in the case and accused Vinay was held guilty under Section 201 read with Section 34 IPC. Appellant/accused was held guilty of offence under Section 302/201/34 IPC.

3.0 The prosecution in order to prove its case examined 26 witnesses.

4.0 In his statement under Section 313 Cr.P.C, the appellant/accused admitted that in the month of December 2011, he had taken on rent, one room set on the first floor of Ravi Kumar's (PW-3) house no. 2492/193-A, Omkar Nagar, Trinagar, Delhi at a monthly rent of Rs. 4000, vide Agreement Ex. PW3/A (Q. no. 1). The appellant/accused also stated that the deceased Pooja was his friend and that he had taken the said room on rent for her and that she resided in the said tenanted room; he visited her in the said room occasionally. Appellant also stated that the deceased was not his wife as he never got married to her and that he never introduced her to anyone, as his wife (Q. no. 2). Appellant also admitted that he knew HC Balraj (PW-14) of PS Keshavpuram and had apprised him about missing of his wife and that he (HC Balraj) had talked to HC Om Pal (PW-11) for helping him. The appellant also stated that he had handed over one photograph of Pooja to HC Om Pal when he met him for help (Q. no. 16). Appellant/accused admitted (Q. no. 34) that Pooja had Om engraved on the reverse side of her right palm but denied that she got engraved either "PJ" or "YS" and then stated that he was not aware whether she got engraved either of those alphabets. In response to Q. no. 35, although, the appellant/accused denied that he misled

the deceased's mother (PW-6), he stated that he made several calls to trace the deceased Pooja and that he visited many places to trace her but failed and ultimately, the deceased's mother accompanied him to PP Shanti Nagar and she lodged the missing report. The appellant/accused denied other incriminating circumstances put to him and stated that he is innocent and has been falsely implicated in this case. He further stated that police picked him up from his house in the area of Mangol Puri on 20.03.2012. Appellant/accused chose not to lead any evidence in his defence.

5.0 Learned counsel for the appellant argued that the prosecution has failed to prove the chain of circumstances so as to connect the appellant to the crime. There is no witness who saw the appellant visiting the deceased's house before her death where she was living with the appellant. Neither did anyone see the appellant carry the dead body of the deceased from the house where she was living with the appellant. There is no medical evidence to show the cause of death of the deceased. Further, the prosecution story does not disclose the manner in which the deceased was killed i.e., whether she died due to asphyxia or was poisoned. There is no witness who saw the appellant/accused dispose of/throw the dead body at the given spot. Further, no earth control from the room of the appellant was lifted to show that the deceased was killed in the room.

5.1 Learned counsel for the appellant/accused further argued that it is unbelievable that the appellant who as per prosecution destroyed all evidence including the deceased's body, would keep a blood stained *dao* (chopper) in his room to be recovered by the police. From the same it is apparent that the

said *dao* was planted on the appellant. Reliance in this respect was placed on the judgment of Delhi High Court in Crl. A. 997/2012 dated 05.12.2012 titled as “*Ghanshyam Prasad Yadav Vs. State*”

5.2 Learned counsel also argued that the star witnesses of the prosecution i.e., PW-4 Naresh and PW-10 Nirmala have failed to identify the appellant. PW-4 denied that he stated to the police that on 16.03.2012, the accused persons Yogesh Sharma/Appellant, Ajay Prajapati and Vinay visited his jhuggi and purchased the *dao*. Ld. Counsel submitted that falsity of the prosecution case is exposed from the fact that none of the independent witnesses have supported the prosecution case.

5.3 Learned counsel also contended that as per prosecution, initially, the tattoo read as “SR: but later PW-26 changed the version that it read as “YS” which has remained unexplained.

5.4 Learned counsel for the appellant also argued that though it is the prosecution case that the dead body was brought on a scooter but it utterly failed to connect the appellant with the alleged scooter bearing registration no. DL4SAN1288 as PW-26 deposed that he did not remember if any document regarding ownership or registration of the said scooter was collected during the investigation.

5.5 Learned counsel for the appellant further argued that as per PW-3 Ravi Kumar, the deceased was happily living with the appellant. Further, it is prosecution’s own case that the appellant took the deceased to the hospital

for treatment. In view of these facts, the prosecution has utterly failed to prove any motive on the part of the appellant which shows that the appellant has been falsely implicated in the matter.

6.0 *Per contra*, the Learned Prosecutor argued that vide testimony of PW-3 Ravi Kumar, the landlord and PW-6 Usha, mother of the deceased, it has come on record that the appellant/accused was in live-in relationship with the deceased. On 16.03.2012, during evening hours, PW-3 Sh. Ravi Kumar had seen co-accused Ajay and Vinay with the appellant in his room. Vide testimony of PW-1 Amit and the Admission/Discharge Record/ Ex. PW1/A of the deceased as well as the testimonies of PW-2 Dr. Ravikant Guglani and PW-21 Dr Kulbushan Goyel, it has come on record that the appellant/accused had taken the deceased to 'Nirmal Hospital' on 14.03.2012 for abortion. In order to mislead, the appellant/accused visited PP Shanti Nagar, PS Keshavpuram along with PW-6, mother of the deceased, to lodge a missing person report but did not provide a photograph of the deceased for the registration of the report as has come on record vide testimonies of PW-6 Usha, mother of the deceased, PW-11 HC Om Pal Singh and PW-14 HC Balraj.

6.1 Ld. Addl. PP further argued that the body of the deceased was identified by PW-6/her mother from the photographs on the basis of three tattoos on her hand being Om (symbol), PJ and YS and green coloured kurti with pink flowers worn by the deceased. Further, as per the FSL report, DNA of the deceased and her mother matched. Accordingly, it was proved that the deceased was the biological daughter of PW-6/Smt. Usha.

6.2 Ld. Prosecutor also argued that the scooter bearing registration no. DL 4S AN 1288 on which the dead body was carried, chopper wrapped in a newspaper from the slab of the tenanted premises of the appellant/accused were recovered at the instance of the appellant/accused and seized vide seizure memos Ex. PW-20/N and Ex. PW-3/A, respectively ; PW-3 witness to the said recovery deposed that on 22.03.2012, police officials had come to the appellant's rented room along with the accused persons and chopper was recovered from there and one ladies' comb with some hair, one hair band were recovered from the top of the air cooler. PW-3 during his cross examination even identified that chopper. PW-26 further testified that the appellant's white colour blood stained shirt and baniyan were also seized at his instance from the bushes in between road and nala on the road leading to Kanhaiya Nagar from Keshav Puram, Near Metro Pillar No. 255 vide seizure Memo Ex.PW20/P. Further, blood of the deceased was recovered from the wiper and chopper, which were seized from the rented room (where the appellant and the deceased lived) vide seizure memo Ex.PW3/A. As per DNA profiling report of FSL, blood from the clothes of the appellant and that of the deceased was found to be the same. Further, blood/DNA on the aforesaid chopper, wiper recovered from the rented room and clothes of the appellant were found to be similar to the DNA of the deceased. Thus, Forensic Evidence also connected the appellant to the crime. It was also argued that other part of the earphone, recovered along with the items recovered with the body of the deceased in katta, was recovered from the room of appellant/accused and deceased.

6.3 It was also contended by the Ld. Prosecutor that when the crime team reached the factory of the appellant/accused, all the accused persons started running from the factory. Said conduct of the appellant also reflects on his complicity in the crime.

7.0 We have duly considered the submissions made by both the sides.

8.0 Criminal justice system was set into motion on 17.03.2012 on sighting of a white plastic bag/*katta* covered with blanket by HC Rajbir Singh (PW-15). PW-15 deposed that on 17.03.2012, he was posted at PS Sarai Rohilla, and was on duty as in-charge ERW (Emergency Running Vehicle-3). At about 10:45 am, when their vehicle reached near ganda nala road no. 38 near 56 Bigha Park, Sarai Rohilla Delhi, he noticed that one white colour plastic *bora* wrapped in a blanket was lying on the side of the road near ganda nala. On checking the same, it was found containing one dead body. Accordingly information was given to the duty officer PS Sarai Rohilla. After sometime, Inspector Bishwajit Kumar (PW-26), SI Sunil, HC Raj Bahadur (PW-20) and Ct. Pramod (PW-19) reached there. PW-15 was not cross examined. Further, the fact that the aforesaid information was received in PS Sarai Rohilla has come in the testimony of PW-5 HC Rajender. PW-5 has deposed that on receipt, the said information was reduced into writing vide DD no. 15A (Ex. PW5/A), which finds corroboration in DD no. 15A Ex. PW 5/A. PW-5 further testified that copy of the said DD Ex. PW5/A was handed over to PW-26 Inspector Bishwajit Kumar who, on receipt of the same, had left for the spot along with the aforesaid police officials. PW-5

was also not cross examined. Hence, depositions of PW-5 and PW-15 remained uncontroverted.

9.0 PW-26/IO Inspector Bishwajit Kumar deposed that on 17.03.2012 on assignment of DD no. 15A (Ex. PW 5/A), he along with SI Sunil, HC Raj Bahadur (PW-20) and Ct. Pramod (PW-19) reached 56 Bigha Park, ganda nala road, Sarai Rohilla. On reaching there, they observed a plastic katta lying covered under a mehoroon colour blanket which had blood stains. The blanket was removed and it was found that the katta contained blood stained clothes and some parts of dead body of a female. He requisitioned crime team. Crime team on its arrival inspected/took out eight parts of the dead body of a female but the head was found missing. He further deposed that on the right arm of the dead body tattoo "PJ" was engraved, another tattoo of "Om" was found on the right hand and tattoo "SR" was noticed near the base of the right thumb. From the body parts, the female appeared to be aged about 25 years. Upper portion of the body was having green colour suit with pink flowers and the lower part of the body was nude. There were two cut marks on the body, one was vertical cut mark from naval to the breast and the second cut mark was alongside the abdominal region appearing to have been made by some sharp edged weapon. Blood stained ladies' and gents' clothes were also retrieved from the plastic katta. One broken head of Aristocrat Premium bottle was also retrieved from the plastic katta along with blood stained glass pieces. Some torn pieces of coloured photographs having blood stains were also retrieved from it. Thereafter, he prepared rukka (Ex. PW 26/A) on the DD Ex. PW5/A and sent to the police station through HC Raj Bahadur (PW-20) for registration of FIR who returned to the

spot and handed over to him, a copy of the FIR. Factum of registration has come in the testimony of HC Rajender PW-5, who deposed that on 17.03.2012 at about 2 pm, one original tehrir was brought by SI Raj Bahadur (PW-20) on which present FIR no. 96/2012 (Ex. PW5/B) was registered.

9.1 PW-26 also testified that thereafter photographs of scene of crime were taken by the crime team and crime team report Ex. PW16/A was received by him. The dead body was sent to mortuary by PW-19 Ct. Pramod. All the articles i.e., blanket, blood stained clothes, one *katta* in a *katta* and broken bottle, were sealed with the seal of BK and were seized vide seizure memo Ex. PW20/A. Torn blood stained photographs were kept in an envelope and seized. Case property was deposited with MHC(M). Further, on 20.03.2012, post mortem was got conducted upon the dead body, at Subzi Mandi Mortuary. Exhibits thereof were collected from the mortuary and seized vide seizure memo Ex. PW26/B and were thereafter deposited in the malkhana.

9.2 PW-26 has also testified that on 22.03.2012, he alongwith SI Sunil, HC Raj Bahadur (PW-20), HC Pushpender, Ct. Vinod and Ct. Yogender visited Shanti Nagar police chowki, PS Keshav Puram, where they met HC Ompal. Photographs of parts of the body were shown to HC Om Pal (PW-11) to find whether any missing report of any lady had been lodged at the chowki. On which, HC Om Pal (PW-11) informed that on 18.03.2012 one boy Yogesh Sharma had visited PP Shanti Nagar to lodge missing report of his wife Pooja and had told that his wife was missing since 16.03.2012. But as he did not have photograph of his missing wife, report could not be recorded. HC Om Pal (PW-11) also informed that one HC Balraj (PW-14),

who knew that boy Yogesh Sharma had requested him (PW-11) to help Yogesh Sharma in case he visited chowki in connection with lodging of missing report of his wife. PW-26 also stated that HC Om Pal (PW-11) on seeing the photographs of body parts (hue and cry notice Ex. PW6/A) told that tattoo on right hand perceived as “SR” actually might be “YS”. PW-26 has also deposed that HC Balraj (PW-14), who had requested PW-11 HC Om Pal to help lodge missing report, was informed to be posted at PS Jahangpuri. However on enquiry at PS Jahangirpuri, it was revealed that PW-14 was posted in the office of DCP North West Ashok Vihar, Accordingly, enquiry was made with HC Balraj (PW-14) who confirmed that he had made the said request as he knew Yogesh since the days he was posted at PP Shanti Nagar.

9.2.1 PW-26 further deposed that although the tattoo engraved on the right hand of the deceased was initially read as “SR” which was later noted to be “YS” and not “SR”, he accordingly sent the corrigendum to the DCP office for sending the same to missing persons squad office.

9.3 PW-26’s deposition with respect to the appellant visiting PP Shanti Nagar on 18.03.2012 for lodging missing person report about the deceased is corroborated by PW-11 HC Om Pal Singh and PW-14 HC Balraj. PW-11 HC Om Pal Singh deposed that on 18.03.2012 he was on emergency duty at PP Shanti Nagar PS Keshav Puram. On that day, at about 3-4 pm, one person namely Yogesh/appellant along with one lady whose name he could not recollect, came to the PS. That boy Yogesh informed that his wife Pooja had gone somewhere without telling and is not traceable since 17.03.2012. On enquiry, Yogesh stated that he resided in Mangolpuri and worked at Talab

Road, Tri Nagar. PW-11 further testified that he asked said Yogesh to bring photograph of his wife Pooja. On which, Yogesh told him that he is the acquaintance of HC Balraj (PW-14) posted at PS Jahagirpuri at that time. Thereafter, said Yogesh left the police post. He has also deposed that subsequently on 22.03.2012, Inspector Bishwajit Kumar PW-26 along with staff visited him and enquired about any missing report of lady in last about 8-10 days. PW-26 had shown him photographs of the dead body which on one hand had a tattoo of “YS” and “Om” and also “PJ”. He then informed PW-26 about one Yogesh having visited him on 18.03.2012 for lodging of missing complaint of his wife Pooja and that he had asked that boy to bring photograph of his wife but he never returned. He had also apprised PW-26 that reference of HC Balraj (PW-14) of PS Jahangirpuri was given by said Yogesh. PW-11 even identified the appellant in court as the person who had visited him on 18.03.2012 for lodging of missing report of his wife Pooja. PW-11 stood by his deposition and categorically denied that the appellant/accused did not come to him at PP for lodging of missing report of his wife Pooja. The said suggestion to PW-11 is contrary to the appellant’s own admission in his statement u/s 313 Cr.P.C, (Q.16) where he stated about meeting HC Ompal PW-11 and even handing over photograph of Pooja (deceased). Same exposes the falsehood of the appellant/accused.

10.0 PW-11’s deposition that the appellant/accused had visited PP Shanti Nagar on 18.03.2012, for lodging of missing report of the deceased, along with one lady is corroborated by PW-6 Smt. Usha, mother of the deceased. PW-6 deposed that her daughter used to reside with the appellant and that

she (PW-6) used to talk to her daughter on her daughter's mobile phone 9582722319 from her mobile phone 9999832405. She stated that in the month of March (the date she could not recollect), her daughter Pooja's mobile phone was continuously switched off from 12 noon till 3 pm. At about 3 pm, she called the appellant/accused Yogesh on his mobile phone to enquire about Pooja/deceased. The appellant/accused told her that he had given some medicine to Pooja and that she was sleeping. Thereafter, the appellant did not pick up her phone. Finally, at about 10.30 pm he picked up the phone and told her that Pooja had left his house for her village after taking Rs. 5000 and her clothes and that he was unaware about her present whereabouts. She further testified that on 18.03.2012, the appellant took her and her son Naveen to PP Shanti Nagar for getting the missing report of Pooja lodged. However, at police post, the appellant told her that police will not record missing report without photograph of Pooja and on the pretext of bringing Pooja's photograph from home, he left the police post. When police official asked her about the appellant, she came out but the appellant was not to be seen. Thereafter, she along with her son Naveen left the police post to go to the appellant's factory at Tri Nagar. But the appellant met them on the way and requested them to accompany him to her native place i.e. village Chandrapur, District Rudraprayag, Uttarakhand on the pretext that Pooja/deceased had gone to her aunt/mausi's house. On which, she, her son Naveen, her husband Mohd. Sheikh and her jethani's son Manoj accompanied the appellant to Uttarakhand but Pooja was not to be found. As such, they returned to Delhi in the night of 21.03.2012. These facts remained uncontroverted as PW-6 was not cross examined in this regard except suggesting to her that she is not the mother of Pooja, which she categorically

denied. She further stated that she had given birth to pooja in the month of November. She also stated that all her three children including Pooja are out of her first husband Ram Singh and that presently she has been residing with Moinudin Sheikh for last about 12-13 years.

10.1 PW-6 further deposed that on 22.03.2012, she came to know that the appellant Yogesh Sharma, (whom she duly identified) with whom her daughter Pooja used to reside, has been apprehended by the police. When she reached PS Sarai Rohilla, IO had shown her the photograph of the cut right hand of her daughter Pooja on which there were tatoos of PJ and OM which she got encrypted in her presence. There was also one tatoo of YS which she got encrypted in the name of her friend Yogesh Sharma i.e. the appellant/accused present in the court. She identified the photograph being of the right hand of her daughter Pooja. PW-6 also stated that IO had also shown to her, the dark green flower printed lady's shirt (kurta) having blood stains, which also belonged to her daughter Pooja. PW-6 has stood by the same in her cross examination and reiterated that she had identified the body of her daughter on seeing tattoos "PJ", "Om" and "YS" on cut right hand of her daughter Pooja. Ld. Prosecutor also pointed to the FSL report (at pdf page 747 of LCR) to show that the DNA of the deceased also matched with that of her mother, whose blood sample was taken on 02.04.2012 (Ex.PW 26/D). However the said report having not been proved cannot be looked into. Be that as it may. Body of the deceased was duly identified by her mother/PW-6 from tattoos on hand and her kurta. Even otherwise, no challenge was made to identification of the dead body except arguing that the tattoo was stated to read 'SR: but later PW-26 changed the version that it

actually read as 'YS' which has remained unexplained. Suffice it to state that it has come in the testimony of PW-11 that when he was shown photograph (Ex.PW6/A) of the dead body on 22.3.2012, he had noticed that on the hand, a tattoo of 'YS' and 'OM' was engraved and word PJ was also written. This fact remained uncontroverted as PW-11 was not cross-examined in this respect. On perusal of the photograph Ex. PW-6/A, the tattoo does appear to be 'YS'. Further, even PW-26 has clarified in his testimony that though initially the tattoo on the right hand of the deceased was perceived as 'SR', later it was realized that it was 'YS' and accordingly, corrigendum was sent to the DCP Office.

11.0 PW-26 further testified that after coming to know about the appellant visiting PP for lodging of missing report of his wife, he along with PW-14 HC Balraj visited premises bearing no.1387, Gali No.92, Ganesh Nagar, Tri Nagar. It was the factory of the appellant Yogesh. Three persons met there. Out of them, one person was pointed out by HC Balraj (PW-14) as Yogesh/appellant. On which, said Yogesh became scared and perplexed and tried to run away. Ct. Vinod apprehended him. On inquiry, the names of other two persons were revealed as Vinay and Ajay. Same finds corroboration in the testimony of PW-14 HC Balraj. In his cross examination, PW-14 stated that he was posted at PS Keshav Puram perhaps in the year 2009-10 and knew the appellant/accused Yogesh since then; accused Yogesh used to visit his colleague Satish Kumar who had introduced the appellant to him. He further stated that PW-26 Inspector Bishwajit Kumar had met him at about 2:30-2:45 pm on 22.03.2012 and was accompanied by SI Sunil and other staff members.

12.0 It is significant to note that when the aforesaid circumstance, of the appellant visiting PP Shanti Nagar to lodge a missing report of his wife Pooja which could not be recorded as he did not have photograph, was put to the appellant during his statement under Section 313 Cr.P.C (Q.16), he admitted the same. He stated that *“It is correct that on 18.3.2012, I went to police post Shanti Nagar to lodge a missing report of my wife Pooja telling him that **my wife** was missing. I also told him that the one room set was lying locked from outside. **It is correct that I knew HC Balraj** of Police Station Keshav Puram and apprised him that **my wife was missing** and he talked to HC Ompal for my help in this matter. I also handed over one photograph of Pooja to HC Ompal, at the time I met him for his help.”* Appellant/accused also admitted (Q 61) that he had made a call to HC Balraj (PW-14) to seek his help in this regard. But (in response to Q no.59) he stated that *“I had given photograph of my friend Pooja to HC Om Pal at that time”*. The Fact that the missing report of the deceased was not lodged as the appellant did not provide photograph, has come on record vide testimonies of PW-6 Usha and PW-11 HC Om Pal.

Live-in-relationship

13.0. It has come in the testimony of PW-6 Usha, mother of the deceased that the deceased was residing with the appellant, which fact remained uncontroverted as PW-6 was not cross-examined in that regard. Same also finds corroboration in the testimony of PW-3 Ravi Kumar, the landlord of the appellant, who otherwise turned hostile on certain facts. PW-3 deposed that in the month of December 2011, he had rented out one room set at the first floor of his house @ monthly rent of Rs. 4,000/- to the appellant vide

rent agreement signed on 12.12.2011 Ex. PW-3/A. He also deposed that the appellant was residing in the said house with his wife Pooja. As he resiled from his previous statement, PW-3 was cross-examined by the Ld. Prosecutor. In his said cross-examination, PW-3 further stated that the appellant used to introduce the girl namely Pooja, aged about 20-22 years as his wife. PW-3's testimony in this respect and Ex. PW-3/A rent agreement, have remained uncontroverted as he was not cross-examined in this regard except being asked, to whom was the rent being paid, to which PW-3 replied that the appellant used to pay rent to PW-3's mother. However to the contrary, the appellant in his statement under Section 313 Cr.P.C (Question no. 2) stated that "Pooja was my friend. She was not my wife. We never got married. I never introduced her to anyone as my wife. She used to reside in the said tenanted room. I had taken this room on rent for her. I used to visit her in this room occasionally" No such defense that he visited only occasionally at the aforesaid rented premises, was put either to PW-3 or to PW-6 Usha, mother of the deceased, who categorically stated that the deceased was living with the appellant in the said premises. The falsity of the aforesaid defence taken by the appellant for the first time in his statement under Section 313 Cr.P.C is also evident from the fact that the appellant himself (in response to Question no. 16) stated that he had gone to PP Shanti Nagar to lodge missing report of **his wife Pooja**.

13.1 Thus, it stands established that the deceased was living with the appellant on the first floor of house no. 2492/193, Onkar Nagar-A, Tri Nagar, Delhi-110035 since after 12.12.2011 and was represented as his wife. False defense taken by the appellant in this regard is an additional link in the

chain of incriminating circumstances against him (*Sharad Biridhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622 ; Ramanand @ Nandlal Bharti Versus State of Uttar Pradesh, 2022 SCC Online SC 1396*).

Termination of Pregnancy of the deceased

14.0. Vide testimonies of PW-1 Amit Kumar, PW-2 Dr. Ravikant Guglani, PW-10 Ms. Nirmala and PW-26 Ins. Biswajeet Kumar, it has come on record that the deceased was admitted in Nirmal Hospital, Sultan Puri and underwent termination of pregnancy.

14.1. PW-1 Amit Kumar deposed that he is employed with Nirmal Hospital, Sultan Puri. On 14.03.2012, when he was on duty in the hospital, one lady by the name Pooja was brought to the hospital by one person, who revealed his name as Yogesh (appellant was duly identified in court). There were two more ladies who were introduced as *nanad* and mother-in-law of Pooja. PW-1 further deposed that the appellant told that Pooja, his wife was 10-11 weeks pregnant and was bleeding as she had consumed some medicine. He then sent the patient Pooja to Dr. Rekha for examination. Dr. Rekha after examination, advised the patient to be admitted and the Admission Form/Consent Form (Ex. PW-1/A) was filled by the Staff Nurse and the same was signed by the appellant Yogesh at point A in his presence. The appellant also paid Rs. 6,000/- for the abortion treatment of Pooja. In his re-examination by the Id. Prosecutor, PW-1 proved the relevant entry in the name of Pooja and receiving of payment of Rs. 6,000/- (Ex. PW-1/B). In his cross-examination, PW-1 stood by his deposition and categorically denied that the appellant never visited their hospital for treatment of patient Pooja and did not sign Ex. PW-1/B. He further stated that he saw the appellant at

the time of registration/admission of patient Pooja and categorically denied that he did not see or meet the appellant. He also denied that the appellant had not signed on the consent form in his presence and that all the documents were prepared by the nurses. Though PW-1 admitted that no witness was asked to sign on the Consent Form Ex. PW-1/A, he went on to explain that when Mr. Yogesh/the appellant, who claimed to be the husband of the patient, himself had signed the said form, witness was not required. Fact that the appellant's signatures do not appear in the relevant entry Ex.PW-1/B in the register, is therefore, not of much significance.

14.2. PW-26 Ins. Biswajit Kumar/IO in this respect has deposed that pursuant to disclosure statement Ex. PW-20/H of the appellant, he along with HC Raj Bahadur (PW-20) took the appellant to Nirmal Nursing Home, Sultan Puri, Delhi. In the said Nursing Home, Dr. Ravikant Guglani (PW-2) handed over to him, the treatment record/sheet of the deceased (Mark A, Mark B), consent form Ex. PW-1/A and another treatment document Ex. PW-1/B, which were seized vide seizure memo Ex. PW-2/A. PW-26 was not cross-examined in this respect except suggesting to him that the appellant had not made any disclosure statement.

14.3 Testimony of PW-26 is corroborated by PW-2 Dr. Ravikant Guglani. PW-2 deposed that he is running Nursing Home in the name and style of "Nirmal Hospital" situated at C-6/241-243, Sultan Puri, Delhi for last 12 years. He was out of station on the day of the incident (14.3.12). On 24.3.12, SHO Bishwajit (PW-26) came to his hospital with other police officials along with the appellant, (whom he identified in the court) and made inquiries with him. He further stated that he had handed over to PW-

26, the Admission Form/Consent Form PW-1/A, treatment papers Mark A and B and photocopy of OPD register Ex. PW-1/B, wherein the entry in the name of Pooja was made. Same were seized vide memo Ex. PW-2/A and that he had signed the same. In his cross-examination, PW-2 denied that he had not handed over the aforesaid documents to PW-26. He, however admitted that treatment sheets Mark A and Mark B do not mention name and address of the husband of Pooja/deceased. Perusal of the treatment sheets (Mark A and Mark B) show that there is no separate column meant for recording of name of the husband/spouse.

14.4. PW-10 Nirmala, deposed that in the year 2012, she was working as a nurse at Nirmal Nursing Home, Sultan Puri, Delhi. She could not recollect the exact date, month and year, but testified (on 24.11.2014) that about 2 years back, while she was on night duty, one lady patient namely Pooja was admitted in the Nursing Home on that day; and at night time, one lady attendant was also present with her. She stated that she did not know anything else about the matter as she had only changed the pad. As she resiled from her previous statement, she was cross-examined by the Ld. Prosecutor. In her said cross-examination, she stated that she had been working in Nirmal Nursing home as senior nurse for last about 6 years. She also admitted that being a senior nurse, it is her duty to go through the record of the patients admitted in the Nursing Home and that from such record, ailment for which the patient is admitted, is known to the nurse and accordingly, the treatment/medicine is provided to the patient. She also admitted that patient Pooja had undergone abortion at their Nursing Home, though she could not remember whether the said procedure was performed

on 14.03.2012. She also admitted that she had provided necessary treatment to the patient Pooja, who at that time was bleeding. PW-10 however stated that she had not seen the husband of the patient and denied that the appellant/husband of the patient was present at that time at the hospital. She denied that she was deliberately not stating the truth/identifying the appellant as she had been won over by the relatives/friends of the appellant. In her cross-examination by the appellant and other accused, PW-10 expressed her ignorance whether ID proof of the husband and wife, who visit the hospital for abortion, are taken. She could not even tell the age of the patient.

14.5. It is noteworthy that the post mortem report of the deceased (Ex. PW-21/A) proved by PW-21 Dr. Kulbhushan Goyal, records the opinion inter alia as “Uterine findings are consistent with the recent act of termination of pregnancy.” Same remained uncontroverted as PW-21 was not cross-examined in this respect.

14.6. In view of the above, it is established that the appellant accompanied the deceased to Nirmal Hospital, Sultan Puri, Delhi on 14.03.2012, where she was admitted and underwent termination of pregnancy. Ex. PW-1/A shows the date and time of admission of the deceased in that hospital as 14.03.2012 at 11.40 am; and that she was lodged in room no. 6 for post care. Same shows that the appellant has made a false statement under Section 313 Cr.P.C (Q. 42 and 58) to the effect that at no point of time, Pooja suffered abortion. Such false statement by the appellant adds as yet another incriminating circumstance against him.

15.0. In view of the above, in terms of Sec. 106 Indian Evidence Act, the onus shifted to the appellant to explain as to how did the deceased die. In *Trimukh Maroti Kirkan vs. State of Maharashtra 2006) 10 SCC 681*, the Hon'ble Supreme Court observed :

"14. If an offence takes place inside the privacy of a house, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. ... The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. ...

*...
15. ... In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."*

15.1 Further, the Hon'ble Supreme Court in *Arvind Singh Versus State of Maharashtra ((2021) 11 SCC 1)* observed:

“(iii) Applicability of Section 106 of the Evidence Act

79. The most important aspect in the present appeals is presumption under Section 106 of the Evidence Act. This Court has examined the scope of Section 106 of the Evidence Act in Shambu Nath Mehra v. State of Ajmer, State of W.B. v. Mir Mohammad Omar, Sucha Singh v. State of Punjab,

Rajender v. State (NCT of Delhi). In Shambu Nath Mehra. This Court held as under : (AIR p. 406, para 11)

“11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.”

15.2 In view of the above facts and settled position of law, it was for the appellant to explain as to what transpired between 14.03.2012, when the deceased underwent abortion in Nirmal Hospital and remained in post care till late at night; and the morning of 17.03.2012, when her dead body cut into pieces, was found in a plastic *katta* by police officials. The appellant has utterly failed to state anything in this regard much less explain the vanishing of the deceased. The appellant has not stated anything as to when did the deceased return from hospital. As has come in the testimony of PW-6, the appellant told her (PW-6) that the deceased had left for her village. But the appellant did not state under what circumstances she left. These facts were in the special knowledge of the appellant and he could place the same on record without any difficulty to come clean. But he has failed to do so. Rather, the appellant's conduct of visiting the police post Shanti Nagar for lodging of missing person report about the deceased and still not taking necessary action (providing her

photograph) to ensure that the same is lodged; and rather admittedly taking PW-6 to her native place i.e. village Chandrapur, District Rudraprayag, Uttarakhand on the pretext that Pooja/deceased had gone to her aunt/mausi's house, where she was not found. It is also significant to note that in his statement u/s 313 Cr.P.C (Q.35), the appellant has stated that he made several calls/visited many places to trace the deceased without any success. But the appellant did not give any details of the persons to whom he made phone calls and the places he visited, to search for the deceased. The Hon'ble Supreme Court in *Trimukh Maroti Kirkan's case (Supra)* in para 21 observed that :

*"21. In a case based on circumstantial evidence where no eyewitness account is available, there is **another principle of law which must be kept in mind**. The principle is **that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. ...**"*

15.3 Instead of explaining as to what transpired during the period from 14.03.2012 till the morning of 17.03.2012, the appellant was in total denial of the facts. He stated that he only occasionally visited the deceased and never introduced her as his wife. Thus, an adverse inference can be drawn against the appellant/accused for offering false explanation.

Medical Evidence – Deceased died homicidal death

16.0 Post mortem report of the deceased (Ex. PW21/A) proved by PW-21 Dr. Kulbushan Goel, inter alia reads as under:

“1. *Post mortem no. 484 Dated 20/3/12 Time: 3:30 pm*

2. *Conducted by: Dr. K. Goyal, Chief Medical Officer, Civil Hospital, Delhi*

3. *Body of: Unknown Female Age: about 25 years D/o, W/o: Not known*

4. *Body sent by: Insp. Bishwajit Kumar PS: Sarai Rohilla*

.....

GENERAL DESCRIPTION

Clothes Worn & Their Condition: There is one dark green kurta torn vertically at left side having colored flowered embroidery, smeared with blood. No other cloth present.

.....

Rigor Mortis: Definitely can't be assessed as body is in pieces however passed off from fingers.

Post Mortem Staining: Back of chest and abdomen except pressure points.

.....

Any Discharge From Natural Orifices: Slight discharge from vagina

EXTERNAL INJURIES

Body is in 8 pieces. Head, face and neck portions are absent.

A. **Ante-mortem injuries**- 3 different bruises of sizes 2x2 cm, 1.5x1 cm and 1.25x1 cm, reddish in color just below left clavicle in triangular ____ about 3-4 cm apart each others.

B. **Post-mortem injuries**-

1. *Right upper limb is found severed from Elbow joint. Margins are found cut but not so sharply and separated from the bony joint. No vital reactions seen at margins. Pale area was seen.*

.....

5. *There are multiple transverse cuts over middle of abdomen 5'' to 8.5'' length skin deep to muscle deep and two cuts are deep exposing peritoneal cavity having no bruising or blood..... Few superficial cuts over lateral aspect of left side chest having no vital reactions.*

6. ***Head, face and neck were missing. Neck is found amputated almost from the base with multiple attempts for amputation at skin and subcutaneous tissues. Amputation is done between 6th and 7th cervical vertebrae i.e. 7th cervical rib is present and its surface is pale. The cut***

margin are not showing any significant vital reactions. However, there is little bruising seen scattered in remained soft tissues of neck at few places. All body parts are of same complexions and cut parts more or less fit at their respective places.

OPINION

- *Opinion regarding cause of death cannot be given as vital parts like head and neck are missing. However, in view of circumstances and post mortem mutilation of body into multiple parts for its disposal is strongly consistent with homicide.*
- *Injuries marked at point A are ante mortem in nature, covered by blunt force imports. Injuries B (no 1 to 6) are post mortem in nature caused by relatively sharp, heavy cutting weapon. Grossly, all parts belong to same body.*
- *Uterine findings are consistent with recent act of termination of pregnancy.*

Time since death is about 4 days.

INTERNAL EXAMINATION

.....
i. *Genital organs- uterus enlarged – 9x11.5x4 cm. Blood clots seen in uterine cavity adhered at upper part (____) of cavity. Cervical canal mildly bruised.*
..... ”
.....

16.1 As per post mortem report Ex. PW21/A, PW-21 could not give specific cause of death as the vital parts like head and neck were missing. However, he has noted that in view of the circumstances and post mortem mutilation of the body for its disposal is strongly consistent with homicide. In view of same, there is hardly any merit in the appellant's argument that the appellant could not be connected as the post mortem report does give cause of death and the manner in which the deceased was killed. Time since death has been opined to be about four days. PW-21 in his cross examination explained that probable duration between death and post mortem

examination is given on the basis of atmospheric factor, external condition of the body, condition of food material in the stomach, amount of urine and faecal matter etc. This probable duration in this case would be three days or five days.

16.2 Post mortem was conducted on 20.03.2012 at 3:30 pm and the time since death has been opined to be about four days. PW-21 in his cross-examination stated that the probable duration of death in this case could be three days or five days. In view of the same and considering that the body of the deceased was found in the morning of 17.03.2012, the deceased died some time on 16.03.2012.

PW-17 overheard appellant's conversation to kill the deceased

17.0. PW-17 Raj Kumar Prajapati @ Pappu testified that in the year 2012 he was working in the factory owned by the appellant/accused at 1387, gali no. 92, Tri Nagar Delhi. On 15.03.2012 at about 4 pm, when he went out of the factory to urinate, he saw appellant/accused talking to his friend Vinay (co-accused) that Pooja has to be killed. He returned to the factory after relieving himself. Thereafter, he saw the appellant/accused, Vinay and another employee in the factory i.e. Ajay, but could not hear their conversation. PW-17 further deposed that next day i.e. on 16.03.2012 at about 4 pm, the appellant came to the factory and called co-accused Vinay. He asked other employees to leave the factory. On which, he (PW-17) cleaned the factory and started watching TV in the factory. Thereafter, the appellant and other accused persons left the factory for somewhere on Pulsar Motorcycle at about 5:30 pm. At about 7:30 pm, the appellant returned to the factory on the same motorcycle with the accused Vinay and he noticed that

there was a katta in the lap of the accused Vinay. They asked him to lift the katta from the vehicle telling that it was containing *tamba*. He noticed blood stains on the katta and thus did not lift the same and left the factory; and that night, he slept on the footpath. Next morning i.e. on 17.03.2012 at about 9:30 am, while he was sitting at footpath, the appellant came and asked him to do his work in the factory. He further told him *jo hoga mai dekh lunga tum jakar kaam karo*. Whereafter, he went inside the factory and started doing his work. After 3-4 days, the police officers came to the factory and apprehended him and took him to the PP where he was told that the appellant and other accused persons had murdered Pooja and it was alleged that he was also involved. On which, he narrated all the facts in his knowledge and was then made a witness. PW-17 also deposed that his statement under Section 164 Cr.P.C (Ex. PW12/B) was recorded before the Id. Magistrate and on being shown Ex. PW-12/B, he admitted that it is his statement which bears his signatures at point A. He also admitted the facts stated therein.

17.1. Learned counsel for the appellant argued that though it was alleged that the dead body was brought on a scooter. PW-17 has stated that it was Pulsar motorcycle. Prosecution has even utterly failed to connect the appellant/accused with the alleged scooter bearing registration no. DL4SAN1288; and IO/PW-26 even stated that he did not remember if any document regarding ownership or registration of the said scooter was collected during the investigation.

17.2 PW-17 deposed about dead body being brought on a motorcycle and stated that he did not tell that it was a motorcycle or a scooter. However In

another breath, he stated that in his statement recorded by the Ld. M.M, he had stated that Yogesh and Vinay having brought a katta on Eterno scooter. However on seeing the scooter bearing no. DL4SAM1288, when produced in the court, PW-17 denied that it was the same vehicle on which the appellant and accused Vinay had brought a katta in the factory and reiterated they had come on a pulsar motorcycle. On which, he was confronted with his statement u/s 164 Cr.P.C Ex. PW-17/A, where it is so recorded. In his cross-examination, by the appellant/accused persons, recorded after about one year, PW-17 turned totally hostile and stated that he had made a statement before the Ld. MM as directed by the police as he was detained by the officials of PS Sarai Rohilla on the intervening night of 17/18.03.2012 and was threatened with false implication. He even stated that on the date of his deposition (examination in chief) in court also, he was threatened. He also stated that he never saw any plastic katta stained with blood. PW-17 apparently was won over by the appellant/accused during the long interregnum of one year.

Recovery

18.0 PW-26 IO Bishwajit Kumar deposed that on 22.03.2012 when he along with HC Balraj (PW-14) went to the factory of the appellant at premises no. 1387, gali no. 92, Ganesh Nagar, Tri Nagar, they met three persons. HC Balraj pointed towards the appellant/Yogesh. On which, the appellant got scared and perplexed and tried to run away but was apprehended by Ct. Vinod. On enquiry, he revealed names of other accused persons. The appellant on interrogation confessed to his involvement in the crime. He was arrested vide arrest memo Ex. PW 20/D. His disclosure

statement Ex. PW 20/H was recorded. PW-26 further testified that pursuant to the said disclosure, the appellant led them to a portion on the ground floor of the factory and got recovered iron *kund* (Ex. P13) which was sealed with the seal of BK and was seized vide seizure memo Ex. PW 20/N1 (Ex. PW20/O). All the three accused persons got recovered a container (Ex. P14) containing a small quantity of thinner which also was sealed and seized vide seizure memo Ex. PW20/O. The appellant pointed towards his scooter bearing registration no. DL4SAN1288 which also was seized. He also deposed that on the same day, all the three accused persons led the police team to house no. 2492/193 and the appellant pointed out (vide pointing out memo Ex. PW3/C) that he and the deceased used to reside in the said house on the first floor. He requisitioned crime team who inspected first floor portion and took photographs. PW-26 also deposed that the appellant picked up a chopper (Ex. P1) wrapped in a newspaper from the slab in the tenanted room and produced it before him; rough sketch Ex. PW3/F of the same was prepared. Three glasses were found lying in the tenanted room, one of which was partly broken and was having blood stains, one comb (Ex. P7) with one hair in it and 2/3 hairbands were found lying on air cooler lying in the tenanted room, one empty plastic bottle and one wiper were also found lying; one broken ear phone was also lying on the floor which was also picked up. Same were sealed with the seal of SKS and seized.

18.1. PW-26 also deposed that the appellant in the company of other two accused persons led them to ganda nala, Chhapan Bigha PRK, Bharat Nagar and pointed out (vide Pointing out memo Ex. PW20/I) to a place stating that he and his co-accused Vinay had thrown the dead body of the

Pooja/deceased. He also pointed out to another part of the same drain (vide pointing out memo Ex. PW20/M) where they had thrown head of the Pooja/deceased. The appellant also took them to the aforesaid factory and pointed out (vide pointing out memo Ex. PW20/N) the place where they had burnt the head of the deceased Pooja. PW-26 also testified that they were also taken to Kurra Khatta by the side of aforesaid ganda nala and pointed out the place where the appellant/accused had burnt his clothes and clothes of the deceased and thrown them.

18.2 PW-26 further deposed that pursuant to his disclosure statement Ex. PW20/H, the appellant/accused Yogesh led them to the place having bushes situated between road and nala on the road leading to Kanhaya Nagar from Keshav Puram, near metro pillar no. 255 and pointed out in bushes, his white colour blood stained shirt and baniyan which he was wearing at the time of occurrence; same were sealed in a pullanda with the seal of BK and seized vide seizure memo Ex. PW20/P. Thereafter, PW-26 took the appellant/accused Yogesh to Shanti Nagar Police Post where HC Ompal (PW-11) identified the appellant/accused Yogesh as the same person who had come to him on 18.03.2012 for lodging missing report of his wife Pooja. PW-26 further deposed that on return to police station he deposited case property in malkhana.

18.3 PW-26 further testified that on 24.03.2012, he accompanied the accused persons in the area of nala in search of head of the deceased but the same could not be traced. Thereafter, the accused persons led/pointed to the police (vide pointing out memo Ex. PW4/A) jhuggi no. 6, Ahata Thakur Das, main Rohtak Road, Sarai Rohilla, from where they had procured the

chopper; on pointing out of the appellant/accused they met one person Naresh, (PW4) who confirmed the version of the appellant/accused. PW-20 ASI Raj Bahadur who accompanied the IO/PW-26 also deposed on the same lines.

18.4 PW-26 also deposed that on 02.04.2012 blood sample of Smt. Usha mother of the deceased/PW-6 was got collected at HR Hospital and was sealed and seized vide seizure memo Ex. PW26/D and the same was deposited in Malkhana. Subsequently, DNA Examination was got conducted for comparison/matching with the blood of the deceased. On 26.04.2012, the exhibits were sent to FSL Rohini and on the same day, the scooter which had been recovered at the instance of the appellant was inspected by the FSL team which lifted blood stains with the help of a cloth from the dicky of the said scooter and the same was sealed and seized vide Ex. PW26/E.

18.5 PW-26 identified the exhibits in the court. PW-26 stood by his testimony in cross-examination. Only a general suggestion was put to PW-26 with respect to the recoveries made from/at the instance of the appellant that the same were planted. PW-26 categorically denied that no recoveries were made from/at the instance of the appellant and that all the articles were planted on him. PW-14 HC Balraj, PW-20 ASI Raj Bahadur who accompanied the IO also deposed on the same lines and even they were not cross examined with respect to the recoveries made from/at the instance of the appellant. Rather in cross examination of PW-14, Ld. counsel for the appellant/accused stated that the accused persons do not dispute the identity of the case property recovered from the house of the appellant.

18.6 In view of the above, the recoveries made from/at the instance of the appellant/accused also point towards his involvement in the crime.

19.0 It is prosecution's case that the appellant bought the chopper (with which the body of the deceased was cut into pieces) from Naresh, PW-4 a blacksmith. But PW-4 did not identify the appellant and nothing fruitful could be extracted from him despite his cross examination by the learned Prosecutor and confrontation with his statement under Section 161 Cr.P.C Ex. PW4/X. Rather in his cross examination by the learned counsel for the appellant, PW-4 stated that the contents of the statement under Section 161 Cr.P.C Ex. PW4/X were not read over/explained to him.

Forensic Evidence

20.0. PW-26 also deposed that later FSL reports Ex. PA, Ex.PB (both dated 21.12.2012) and Ex.PC and Ex.PD (both dated 24.12.2012) and DNA Finger Print Report Ex. PG dated 18.06.2013, were collected. These FSL Reports Ex.PA to Ex.PG have remained uncontroverted as PW-26 was not cross-examined. As per DNA examination report of FSL Ex. PC, blood was detected on the exhibits '1' (broken pieces of bottle) '2a' (one salwar) '2p' (peticot of deceased), '2q' (lady's shirt of deceased), '2r' (dirty brownish blackish shirt), '2s' (track's suit – lower) '2t' (one towel), '2u,' (one shirt) '2v' (one pants-jeans) '2w' (sweater of deceased), '2x' (one underwear), '2y' (piece of cloth), '2z' (lady's top) '2al,' (dirty piece of cloth) '2bl' (one payjamee), '2c1' (one shameez) , '2 dl' (dirty pair of socks). '2e1' (one lady's top), '2f1, (one dirty underwear) '2g1' (one dirty underwear), '3' (one lady's shirt), '5a' (shirt) '5b' (pants) , '7' (chooper), '8' (dirty broken glass pieces) '9' (wiper), '10a, (one shirt) '10b' (one pants) '11a' (shirt of accused Yogesh),

'11b' (baniyan of accused Yogesh) '12" (light brown gauze cloth piece) '13' (Gauze cloth piece) ' 14' (Gauze cloth piece) ' & '15' (Gauze cloth piece) '.

20.1. Further, as per DNA profile report Ex. PA and PB of the FSL, allelic data of DNA profile from the source of exhibits '1 (broken pieces of whisky bottle)', '2p (Petticoat of deceased), '2q (Lady's shirt of deceased)', '2w, (Sweater of deceased), '7 (chopper (dav))', '9 (Wiper)', '10a (Shirt of accused Vinay)', '10 b (Pant of accused Vinay)', '11a (Shirt of accused Yogesh)' and ' 11 b (Baniyan of accused Yogesh)' was found to be similar.

20.2. Thus, the above FSL reports/forensic evidence further connect the appellant/accused to the crime.

21.0 Ld. Counsel for the appellant argued that the prosecution has failed to even prove any motive on the part of the appellant/accused to kill the deceased. Particularly, as it has come in the testimony of PW-3 Ravi Kumar that the deceased was happily living with the appellant. Needless to mention that it is not always possible to prove what travels in the mind of the accused except by the attending circumstances. It is a settled position of law that absence of motive on the part of the accused is not always fatal to the case of prosecution (*Shivaji Genu Mahite vs. State of Maharashtra, (1973) 3 SCC 219* and *State of U.P. vs. Kishanpal, (2008) 16 SCC 73*). In the instant case, as noted above that the chain of circumstances clearly connect the appellant/accused to the crime. Therefore, merely because the prosecution has not stated/proved motive on the part of the appellant/accused to kill the deceased, does not in any manner impact the case of the prosecution.

22.0 In view of the above evidence on record, it has been established that :

- (i) the deceased was living with the appellant at the aforesaid rented premises since after 12.12.2011, but took a false defence that he visited her only occasionally;
- (ii) on 14.03.2012, the appellant accompanied the deceased to Nirmal Hopsital, Sultanpuri, where she underwent abortion and remained admitted in hospital in the night;
- (iii) the appellant in his statement u/S. 313 Cr.PC (Q.42 to 58) made a false statement that the deceased never underwent abortion;
- (iv) on enquiry by PW-6 Usha about her daughter's well being, the appellant told/misled her that the deceased had left for her village and even took her to her village in Uttrakhand, where the deceased was not to be found;
- (v) thereafter, on 18.03.2012, the appellant further misled the PW-6 Usha/deceased's mother and admittedly took PW-6 to police post Shanti Nagar, PS Sarai Rohilla to lodge missing person report about the deceased. The appellant/accused admittedly even sought help of HC Balraj (PW-14), (who was known to him) for lodging of missing report of his wife; who in turn had spoken to HC Ompal (PW-11) for helping the appellant. But did not provide the deceased's photograph required for lodging of missing report;

- (vi) meanwhile, on 17.03.2012, body of the deceased cut into pieces, was discovered in a plastic bag on the side of ganda nala, road no. 38 near 56 Bigha Park Sarai Rohilla Delhi ;
- (vii) the deceased died homicidal death. As per post mortem report, the deceased died some time on 16.03.2012;
- (viii) the appellant failed to explain as to what transpired/happened to the deceased between 14.03.2012 (when she underwent abortion) and the morning of 17.03.2012, when her dead body was found;
- (ix) allelic data of DNA profile from the wiper, chopper (recovered from the rented premises), the deceased's clothes and the appellant's clothes i.e., white coloured blood stained shirt and baniyan (recovered at his instance) and other clothes of the appellant, was found to be similar.

22.1 In view of the above, merely because no one saw the appellant carrying dead body or throwing the same in a *katta*, does not exonerate the appellant/accused as pleaded.

23.0 Considering the above facts and circumstances in entirety, the prosecution has been able to successfully establish complete chain of circumstances linking the appellant/accused to the crime. Thus proving beyond reasonable doubt, that the appellant committed murder of Pooja, the deceased. We, therefore, find no illegality in the impugned judgment of conviction and order on sentence.

24.0. In view of the above, we find no merit in this appeal. The appeal is accordingly dismissed.

25.0. Copy of the judgment be uploaded on the website and be sent to the Superintendent Jail for updation of record and intimation to the appellant.

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 10, 2023/gjoshi

